

**NEW YORK BUILDING CONGRESS  
CONFLICT OF INTEREST POLICY**



**ARTICLE I: PURPOSE**

The purpose of this Conflict of Interest Policy ("Policy") is to conform to the requirements set forth in the New York State Not-for-Profit-Corporation Law Sections 715 and 715-a (the "Act") and to protect the interests of the New York Building Congress and its Affiliates, as defined herein, (collectively, the "Building Congress"), when they contemplate entering into a contract, Transaction, as defined herein, or any other arrangement.

It is in the best interest of the Building Congress to be aware of and properly manage conflicts of interest. The Building Congress adopts this Policy to ensure that its Directors, Officers, and Key Persons, as defined herein, act in the best interest of the Building Congress and comply with all applicable legal requirements governing conflicts of interest for non-Charitable Organizations.

**ARTICLE II: DEFINITIONS**

- A. An "**Affiliate**" means any entity controlled by, in control of, or under common control with the Building Congress.
- B. "**Board**" means the Board of Directors of the Building Congress, the body that controls and manages the affairs of the Building Congress.
- C. "**By-Laws**" means the Building Congress Constitution and by-laws, as amended on May 13, 2021.
- D. "**Charitable Corporation**" or "**Charitable Organization**" means any corporation formed, or deemed to be formed, for charitable purposes.
- E. "**Certificate of Incorporation**" includes (A) the original certificate of incorporation or any other instrument filed or issued under any statute to form the Building Congress, as amended, supplemented or restated by certificates of amendment, merger or consolidation or other certificates or instruments filed or issued under any statute, or (B) a special act or charter creating the Building Congress, as amended, supplemented or restated.
- F. "**Director**" means any member of the Board.
- G. "**Executive Committee**" means the committee with the composition and powers set forth in Article V(B)(5) and Article VII of the By-Laws and consists of the Chairman, the immediate Past Chairman, the Vice Chairman, the President, the Treasurer, the Secretary, the General Counsel, and up to four members of the Board appointed by the Chairman.

- H. "Financial Interest"** means the ownership of a legal or equitable interest or a relationship as an organization's director, advisor, or other active participant that directly relates to the Transaction(s), as defined herein, being considered by the Building Congress, except that:
1. ownership in a mutual or common investment fund that holds securities is not a Financial Interest, unless the Related Party participates in the management of the fund; and
  2. a non-compensated office in a Charitable Organization is not a Financial Interest.
- I. "Key Person"** means any "Key Employee", as referenced in 26 U.S.C. § 4958(f)(1)(A) and further specified in 26 CFR § 53.4958-3(c), (d), and (e), or succeeding provisions, and any person, other than a Director or Officer, whether or not an employee of the Building Congress, who (i) has responsibilities, or exercises powers or substantial influence over the affairs of the Building Congress; (ii) manages the Building Congress, or a segment of the Building Congress that represents a substantial portion of the activities, assets, income or expenses of the Building Congress; or (iii) alone with others controls or determines a substantial portion of the Building Congress' capital expenditures or operating budget.
- J. "Officer"** means any Director elected by the Board to serve as an officer of the Building Congress. Pursuant to the By-Laws, the elected Officers consist of a Chairman, two or more Vice Chairmen, President, Treasurer, Secretary, and General Counsel.
- K. "Related Party"** means:
1. any Director, Officer, or Key Person of the Building Congress or any Affiliate of the Building Congress;
  2. any Relative, as defined herein, of any Director, Officer, or Key Person of the Building Congress or any Affiliate of the Building Congress; or
  3. any entity in which any individual described in clauses 1 and 2 of this paragraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.
- L. "Related Party Transaction"** means any transaction, agreement, or any other arrangement in which a Related Party has a Financial Interest and in which the Building Congress or any Affiliate of the Building Congress is a participant, except that a Transaction shall not be a Related Party Transaction if: (i) the Transaction or the Related Party's Financial Interest in the Transaction is de minimis, (ii) the Transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the Transaction constitutes a benefit provided to a Related Party solely as a member of a class of the beneficiaries that the Building Congress intends to benefit as part of the accomplishment of its

mission which benefit is available to all similarly situated members of the same class on the same terms

**M. "Relative"** of an individual means his or her:

1. spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or
2. domestic partner as defined in Section 2994-a of the New York State Public Health Law.

**N. "Transaction"** means any financial agreement or contract between the Building Congress and another party.

### **ARTICLE III: CONFLICT OF INTEREST**

**A. Conflict of Interest.** A conflict of interest may arise when a Related Party has a Financial Interest in a Transaction in which the Building Congress is a participant such that it reduces the likelihood that the influence of a Director, Officer, or Key Person can be exercised impartially in the best interest of the Building Congress. All Financial Interests must be disclosed to the Board, and a decision made as to what course of action the Board should take in the best interest of the Building Congress.

**B. Related Party Transaction.**

1. The Building Congress shall not enter into a Related Party Transaction unless the Transaction is determined by the Board, or an authorized committee thereof, to be fair, reasonable, and in the best interest of the Building Congress at the time of such determination. Any Related Party that has an interest in a Related Party Transaction shall disclose in good faith to the Board, or an authorized committee thereof, the material facts concerning such interest.
2. With respect to any Related Party Transaction involving a Charitable Corporation and in which a Related Party has a substantial Financial Interest, the board of such corporation, or an authorized committee thereof, shall:
  - a. Prior to entering into the Transaction, consider alternative Transactions to the extent available;
  - b. Approve the Transaction by not less than a majority vote of the Directors or committee members present at the meeting; and
  - c. Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative Transactions.

3. The Certificate of Incorporation, By-Laws or any policy adopted by the Board may contain additional restrictions on Related Party Transactions and additional procedures necessary for the review and approval of such Transactions, or provide that any Transaction in violation of such restrictions shall be void or voidable.
- C. Compensation Decisions.** No Related Party who receives compensation from the Building Congress for services shall vote on matters pertaining to that person's compensation. Unless otherwise provided in the Certificate of Incorporation or the By-Laws, the Board shall have authority to fix the compensation of Directors for services in any capacity. The fixing of compensation of Officers, if not done in or pursuant to the By-Laws, shall require the affirmative vote of a majority of the entire Board, unless a higher proportion is set by the Certificate of Incorporation or By-Laws.

#### **ARTICLE IV: ACKNOWLEDGMENT AND DISCLOSURE OF CONFLICTS**

- A. Acknowledgment.** Each Director, Officer, and Key Person shall be provided with and asked to review a copy of this Policy and to acknowledge in writing that he or she has done so.
- B. Annual Statement.** Directors, Officers, and Key Persons shall annually disclose and update, to the best of his/her knowledge, any Financial Interest on the annual Conflict of Interest Policy Acknowledgment and Disclosure Form (the "Disclosure Form"), attached hereto as **Exhibit "A,"** to the Secretary of the Building Congress or a designated compliance Officer. The Secretary or a designated compliance Officer shall provide a copy of all completed statements to the Chairman.
1. **Board Secretary and Chairman.** Each Director, Officer, and Key Person shall annually resubmit the Disclosure Form.
  2. **New Directors.** Prior to the initial election of any Director, and annually thereafter, such Director shall acknowledge, complete, and submit the Disclosure Form, as described in this Article IV.
- C. Ongoing Duty to Disclose.** Directors, Officers, and Key Persons shall disclose any Financial Interests as they arise. Advance disclosure to the Chairman or President must occur so that a determination may be made as to the appropriate plan of action to manage the potential conflict.

#### **ARTICLE V: PROCEDURES TO MANAGE POTENTIAL CONFLICTS**

- A. Duty to Disclose.** Prior to the Board taking action regarding a Related Party Transaction, the Board must ensure the following occurs:
1. If the Director, Officer, or Key Person with the Financial Interest will not be attending the Board Meeting to discuss the Related Party Transaction, then he/she shall disclose any material facts

related to the Financial Interest to the Chairman or President before the Board meets, which will be reported to the full Board during the following meeting.

2. If the Director, Officer, or Key Person with the Financial Interest is in attendance at the meeting, he/she shall disclose any material facts related to the Financial Interest during that meeting.
3. The Secretary must include all disclosures made or presented to the Board in the meeting's minutes.

**B. Related Party's Actions During Discussions.**

1. After disclosure of a Financial Interest and any material facts, the Related Party shall not participate, vote on any matters or be present in any deliberations relating to the Related Party Transaction; provided that nothing in this section shall prohibit the Board or authorized committee from requesting that a Related Party present information as background or answer questions concerning a Related Party Transaction at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto.
2. Such person shall not attempt to improperly influence the deliberation or voting on the Related Party Transaction.

**C. Determining Whether a Conflict of Interest Exists.**

1. For each Financial Interest disclosed, the Board or, as appropriate, the Chairman or the President, shall determine whether the Building Congress should:
  - a. take no action;
  - b. disclose the situation more broadly and invite discussion/resolution by the Board of what action to take; or
  - c. refrain from taking action and otherwise avoid the Related Party Transaction.
2. If the Chairman or President presents the items to the Board, then the remaining Board members shall determine if the Related Party Transaction is fair, reasonable, and in the best interest of the Building Congress.
  - a. Upon a finding that the Related Party Transaction is fair, reasonable, and in the best interest of the Building Congress, the Board shall take no further action prior to approving the Related Party Transaction, except its usual procedures for approving items on the Board's agenda.

- b. Upon a finding that the Related Party Transaction is not fair, reasonable, and in the best interest of the Building Congress, the Board shall address the conflict.

**D. Procedures for Addressing Conflicts of Interest**

1. If the Board or Executive Committee determines that a Related Party Transaction or disclosed Financial Interest presents a conflict of interest, the Board or Executive Committee shall take such action as it deems appropriate under the circumstances, including but not limited to pursuing alternative Transactions.
2. The Secretary shall document in the Board's meeting minutes, the existence and resolution of any conflict of interest.

- E. Confidentiality.** All Directors, Officers, and Key Persons shall not to disclose any information acquired in connection with disclosures of Financial Interest. Furthermore, all Directors, Officers, and Key Persons shall not disclose or use any information relating to the business of the Building Congress for their personal profit or advantage, or the personal profit or advantage of their Relatives.

**ARTICLE VI: RECORD OF PROCEEDINGS**

- A.** The minutes of the Board and Executive Committee meetings shall contain the following:

1. the names of the Directors, Officers, or Key Persons who disclosed or otherwise were found to have a Financial Interest, the nature of the Financial Interest, any action taken, and the Board's or Executive Committee's decision as to whether a conflict of interest in fact existed; and
2. the names of the Directors, Officers, and Key Persons who were present for discussions and votes relating to the Related Party Transaction, the content of the discussion including any alternatives to the proposed Related Party Transaction, and a record of any votes taken in connection with the proceedings.

**ARTICLE VII: POLICY VIOLATIONS**

- A.** If the Board has reasonable cause to believe that a Director, Officer, or Key Person has failed to disclose a Financial Interest, the Board shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

- B.** After receiving the response and making any further investigation, the Board shall take appropriate disciplinary and corrective action as it sees fit if there is substantial evidence that the person has in fact failed to disclose an actual conflict of interest.

#### **ARTICLE VIII: REVIEW OF POLICY**

The Board shall periodically review this Conflict of Interest Policy and amend it, as necessary, to take into account developments in applicable New York State law and regulations, federal laws and regulations, and federal tax law governing organizations described in IRC Section 501(c)(6). Any changes to the policy shall be communicated in writing to all Directors, Officers, and Key Persons.

Date Updated: May 13, 2021

Date Approved: March 6, 2020

**NEW YORK BUILDING CONGRESS  
CONFLICT OF INTEREST POLICY  
ANNUAL ACKNOWLEDGMENT AND DISCLOSURE FORM**



AS REQUIRED BY THE NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW AND THE NEW YORK BUILDING CONGRESS CONFLICT OF INTEREST POLICY, EACH MEMBER OF THE BUILDING CONGRESS BOARD OF DIRECTORS SHALL SUBMIT ANNUALLY AN EXECUTED COPY OF THIS CONFLICT OF INTEREST POLICY ANNUAL ACKNOWLEDGEMENT AND DISCLOSURE FORM DURING HIS/HER TERM ON THE BOARD. EACH KEY PERSON ALSO SHALL SUBMIT ANNUALLY AN EXECUTED COPY OF THIS FORM DURING HIS/HER TERM OF EMPLOYMENT.

**NAME** \_\_\_\_\_

**RELATIONSHIP TO NEW YORK BUILDING CONGRESS** \_\_\_\_\_  
*(OFFICER, DIRECTOR, KEY PERSON)*

**PART I. GENERAL INFORMATION**

1. If you are a Board Member, are you related to another Board Member or staff member of the Building Congress? Yes  No  N/A
2. If you are an employee of the Building Congress, are you related to another staff member? Yes  No  N/A
3. If you are employed by the Building Congress, have you accepted assignments outside of the Building Congress, either as an employee or as an independent contractor, over and above your primary or full-time assignment with the Building Congress? Yes  No  N/A
4. Are you an officer, director, trustee, member, owner (either as a sole proprietor or partner), or employee of an organization with which the Building Congress has a direct financial relationship *other than as a Building Congress member*? Yes  No
5. Do you, your organization, a Relative,<sup>1</sup> or a Relative's organization receive compensation or grant funding from the Building Congress or the New York Building Foundation? Yes  No
6. To the best of your knowledge, do you or any Relative:
  - a. Have a financial interest in a business (*e.g., ownership or investment interest*), or serve as a director, officer, trustee, or Key Person of, an organization that provides paid services to, collects fees from, or otherwise engages in any business transactions with the Building Congress or Building Foundation? Yes  No
  - b. Employ or otherwise retain any Building Congress personnel for work on non-Building Congress business done outside of the Building Congress? Yes  No

<sup>1</sup> For the purpose of completing this Form, please refer to the definition of Relative as set forth in the New York Building Congress Conflict of Interest Policy.



**PART II. SPECIFIC INFORMATION**

If the answer to any of the questions in Part I is YES, please provide a brief description of the nature of the transaction and/or relationship, including the organization name, your position within or relationship to the organization, and the percentage of any ownership or investment interest you have in the organization.

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**CERTIFICATION**

I hereby certify that I have received a copy of the Building Congress Conflict of Interest Policy, have read and understand the policy, and agree to abide by it. I agree to promptly report any potential conflict of interest as and when it arises to the President or the Chairman.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**PLEASE RETURN THE COMPLETED FORM TO:**

NEW YORK BUILDING CONGRESS  
ATTN. ILAN. Z STERN  
SENIOR VICE PRESIDENT  
1040 AVENUE OF THE AMERICAS, 21<sup>ST</sup> FLOOR  
NEW YORK, NY 10018  
[IZS@BUILDINGCONGRESS.COM](mailto:IZS@BUILDINGCONGRESS.COM)